

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 01 OF 2019

*(Arising from Land Appeal No. 45 of 2016 of Kondoa District Land and Housing Tribunal
and original Land Application No. 5 of 2016 of Kingule Ward Tribunal)*

WAZIRI ISSA WAZIRI APPELLANT

VERSUS

CHURI ALLY AIMAYI RESPONDENT

RULING

21st April, 2021 & 21st April, 2021

M.M. SIYANI, J

When the instant appeal came for hearing on 21st April, 2021, Ms. Magreth Mbasha, the learned counsel who appeared for the appellant raised to attention of the court, a point of law that the proceedings of the first appellate tribunal were tainted with irregularities as the same involved a person who was not part of the trial at the ward tribunal. The learned counsel argued that the records of the ward tribunal in Land Application No. 5 of 2016 indicates that one Churi Maloya was the applicant. However, on appeal to the District Land and Housing Tribunal of Kondoa, the petition lodged by the appellant

herein named the respondent as Churi Ally Aimayi instead of Churi Maloya, the fact which led the said first appellate tribunal to order an amendment of the records which however was not complied with. Ms Mbasha was of the view that since the tribunal proceeded to determine the appeal which contained a wrong part despite its own order for amendment, its proceedings were a nullity and should be quashed with the same consequence touching its judgment.

As correctly submitted by counsel Mbasha, the records are clear. The appellant herein appealed against Churi Ally Aimayi who unfortunately is unknown person in the trial tribunal's proceedings. The first appellate tribunal noted such a defect and ordered for amendment. It is imperative to note that such an order was not complied with. In agreement with the learned counsel, I am of the considered opinion that having ordered amendment of the petition to reflect a proper person; and the appellant having failed to comply with such an order of amendment, the District Land and Housing Tribunal was not entitled to proceed with the hearing. It ought to have struck out the appeal because whatever decision that would be reached, would involve a different person and therefore in executable.

It is indeed unfortunate that the appellant who had the services of an advocate at the first appellate tribunal, continued to make the same mistake in this court as even the instant appeal contains the name of Churi Ally Aimayi instead of Churi Maloya. As the petition of appeal bears the names of a person who was not part of the proceedings at the ward tribunal, the appeal before this court is incompetent just as it was at the first appellate tribunal whose proceedings after its amendment order, are now declared to be a nullity.

In the fine, the question of improper naming of the respondent was not raised as a ground of appeal. I therefore invoke the revision powers vested to this court under section 43 (1) of the Land Disputes Courts Act, Cap 216 RE 2019, to quash and set aside both the proceedings and judgment the District Land and Housing Tribunal of Kondoa in Land Appeal No. 45 of 2016. Considering the history, nature and circumstances of this case, I order each party to bear its own costs. It is so ordered.

DATED at DODOMA this 21st day of April, 2021



M.M. SIYANI
JUDGE